

**ASSEMBLY BILL**

**No. 623**

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**Introduced by Assembly Member Lowenthal**

February 20, 2013

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An act to amend Section 2603 of the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 623, as introduced, Lowenthal. Inmates: psychiatric medication: informed consent.

Existing law prohibits, except as specified, a person sentenced to imprisonment in a county jail from being administered any psychiatric medication without his or her prior informed consent.

This bill would instead prohibit, except as specified, a person confined in a county jail from being administered any psychiatric medication without his or her prior informed consent.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2603 of the Penal Code is amended to
- 2 read:
- 3 2603. (a) Except as provided in subdivision (b), ~~no~~ a person
- 4 sentenced to imprisonment *or confined* in a county jail shall *not*
- 5 be administered any psychiatric medication without his or her prior
- 6 informed consent.
- 7 (b) If a psychiatrist determines that an inmate should be treated
- 8 with psychiatric medication, but the inmate does not consent, the
- 9 inmate may be involuntarily treated with the medication. Treatment

1 may be given on either a nonemergency basis as provided in  
2 subdivision (c), or on an emergency or interim basis as provided  
3 in subdivision (d).

4 (c) A county department of mental health, or other designated  
5 county department, may seek to initiate involuntary medication  
6 on a nonemergency basis only if all of the following conditions  
7 have been met:

8 (1) A psychiatrist or psychologist has determined that the inmate  
9 has a serious mental disorder.

10 (2) A psychiatrist or psychologist has determined that, as a result  
11 of that mental disorder, the inmate is gravely disabled and does  
12 not have the capacity to refuse treatment with psychiatric  
13 medications, or is a danger to self or others.

14 (3) A psychiatrist has prescribed one or more psychiatric  
15 medications for the treatment of the inmate's disorder, has  
16 considered the risks, benefits, and treatment alternatives to  
17 involuntary medication, and has determined that the treatment  
18 alternatives to involuntary medication are unlikely to meet the  
19 needs of the patient.

20 (4) The inmate has been advised of the risks and benefits of,  
21 and treatment alternatives to, the psychiatric medication and  
22 refuses, or is unable to consent to, the administration of the  
23 medication.

24 (5) The inmate is provided a hearing before a superior court  
25 judge, a court-appointed commissioner or referee, or a  
26 court-appointed hearing officer, as specified in subdivision (c) of  
27 Section 5334 of the Welfare and Institutions Code.

28 (6) The inmate is provided counsel at least 21 days prior to the  
29 hearing, unless emergency or interim medication is being  
30 administered pursuant to subdivision (d), in which case the inmate  
31 would receive expedited access to counsel. The hearing shall be  
32 held not more than 30 days after the filing of the notice with the  
33 superior court, unless counsel for the inmate agrees to extend the  
34 date of the hearing.

35 (7) The inmate and counsel are provided with written notice of  
36 the hearing at least 21 days prior to the hearing, unless emergency  
37 or interim medication is being administered pursuant to subdivision  
38 (d), in which case the inmate would receive an expedited hearing.  
39 The written notice shall do all of the following:

1 (A) Set forth the diagnosis, the factual basis for the diagnosis,  
2 the basis upon which psychiatric medication is recommended, the  
3 expected benefits of the medication, any potential side effects and  
4 risks to the inmate from the medication, and any alternatives to  
5 treatment with the medication.

6 (B) Advise the inmate of the right to be present at the hearing,  
7 the right to be represented by counsel at all stages of the  
8 proceedings, the right to present evidence, and the right to  
9 cross-examine witnesses. Counsel for the inmate shall have access  
10 to all medical records and files of the inmate, but shall not have  
11 access to the confidential section of the inmate's central file which  
12 contains materials unrelated to medical treatment.

13 (C) Inform the inmate of his or her right to appeal the  
14 determination to the superior court or the court of appeal as  
15 specified in subdivisions (e) and (f) of Section 5334 of the Welfare  
16 and Institutions Code, and his or her right to file a petition for writ  
17 of habeas corpus with respect to any decision of the county  
18 department of mental health, or other designated county  
19 department, to continue treatment with involuntary medication  
20 after the superior court judge, court-appointed commissioner or  
21 referee, or court-appointed hearing officer has authorized treatment  
22 with involuntary medication.

23 (8) A superior court judge, a court-appointed commissioner or  
24 referee, or a court-appointed hearing officer determines by clear  
25 and convincing evidence that the inmate has a mental illness or  
26 disorder, that as a result of that illness the inmate is gravely  
27 disabled and lacks the capacity to consent to or refuse treatment  
28 with psychiatric medications or is a danger to self or others if not  
29 medicated, that there is no less intrusive alternative to involuntary  
30 medication, and that the medication is in the inmate's best medical  
31 interest. In the event of any statutory notice issues with either initial  
32 or renewal filings by the county department of mental health, or  
33 other designated county department, the superior court judge,  
34 court-appointed commissioner or referee, or court-appointed  
35 hearing officer shall hear arguments as to why the case should be  
36 heard, and shall consider factors such as the ability of the inmate's  
37 counsel to adequately prepare the case and to confer with the  
38 inmate, the continuity of care, and, if applicable, the need for  
39 protection of the inmate or institutional staff that would be  
40 compromised by a procedural default.

1 (9) The historical course of the inmate's mental disorder, as  
2 determined by available relevant information about the course of  
3 the inmate's mental disorder, shall be considered when it has direct  
4 bearing on the determination of whether the inmate is a danger to  
5 self or others, or is gravely disabled and incompetent to refuse  
6 medication as the result of a mental disorder.

7 (10) An inmate is entitled to file one motion for reconsideration  
8 following a determination that he or she may receive involuntary  
9 medication, and may seek a hearing to present new evidence, upon  
10 good cause shown.

11 (d) Nothing in this section is intended to prohibit a physician  
12 from taking appropriate action in an emergency. An emergency  
13 exists when there is a sudden and marked change in an inmate's  
14 mental condition so that action is immediately necessary for the  
15 preservation of life or the prevention of serious bodily harm to the  
16 inmate or others, and it is impractical, due to the seriousness of  
17 the emergency, to first obtain informed consent. If psychiatric  
18 medication is administered during an emergency, the medication  
19 shall only be that which is required to treat the emergency condition  
20 and shall be administered for only so long as the emergency  
21 continues to exist. If the clinicians of the county department of  
22 mental health, or other designated county department, identify a  
23 situation that jeopardizes the inmate's health or well-being as the  
24 result of a serious mental illness, and necessitates the continuation  
25 of medication beyond the initial 72 hours pending the full mental  
26 health hearing, the county department may seek to continue the  
27 medication by giving notice to the inmate and his or her counsel  
28 of its intention to seek an ex parte order to allow the continuance  
29 of medication pending the full hearing. Treatment of the inmate  
30 in a facility pursuant to Section 4011.6 shall not be required in  
31 order to continue medication under this subdivision unless the  
32 treatment is otherwise medically necessary. The notice shall be  
33 served upon the inmate and counsel at the same time the inmate  
34 is given the written notice that the involuntary medication  
35 proceedings are being initiated and is appointed counsel as  
36 provided in subdivision (c). The order may be issued ex parte upon  
37 a showing that, in the absence of the medication the emergency  
38 conditions are likely to recur. The request for an ex parte order  
39 shall be supported by an affidavit from the psychiatrist or  
40 psychologist showing specific facts. The inmate and the inmate's

1 appointed counsel shall have two business days to respond to the  
2 county department's ex parte request to continue interim  
3 medication, and may present facts supported by an affidavit in  
4 opposition to the department's request. A superior court judge, a  
5 court-appointed commissioner or referee, or a court-appointed  
6 hearing officer shall review the ex parte request and shall have  
7 three business days to determine the merits of the department's  
8 request for an ex parte order. If an order is issued, the psychiatrist  
9 may continue the administration of the medication until the hearing  
10 described in paragraph (5) of subdivision (c) is held.

11 (1) If the county elects to seek an ex parte order pursuant to this  
12 subdivision, the county department of mental health, or other  
13 designated county department, shall file with the superior court,  
14 and serve on the inmate and his or her counsel, the written notice  
15 described in paragraph (7) of subdivision (c) within 72 hours of  
16 commencing medication pursuant to this subdivision, unless either  
17 of the following occurs:

18 (A) The inmate gives informed consent to continue the  
19 medication.

20 (B) A psychiatrist determines that the psychiatric medication  
21 is not necessary and administration of the medication is  
22 discontinued.

23 (2) If medication is being administered pursuant to this  
24 subdivision, the hearing described in paragraph (5) of subdivision  
25 (c) shall commence within 21 days of the filing and service of the  
26 notice, unless counsel for the inmate agrees to a different period  
27 of time.

28 (3) With the exception of the timeline provisions specified in  
29 paragraphs (1) and (2) for providing notice and commencement  
30 of the hearing in emergency or interim situations, the inmate shall  
31 be entitled to and be given the same due process protections as  
32 specified in subdivision (c). The county department of mental  
33 health, or other designated county department, shall prove the same  
34 elements supporting the involuntary administration of psychiatric  
35 medication and the superior court judge, court-appointed  
36 commissioner or referee, or court-appointed hearing officer shall  
37 be required to make the same findings described in subdivision  
38 (c).

39 (e) The determination that an inmate may receive involuntary  
40 medication shall be valid for one year from the date of the

1 determination, regardless of whether the inmate subsequently gives  
2 his or her informed consent.

3 (f) If a determination has been made to involuntarily medicate  
4 an inmate pursuant to subdivision (c) or (d), the medication shall  
5 be discontinued one year after the date of that determination, unless  
6 the inmate gives his or her informed consent to the administration  
7 of the medication, or unless a new determination is made pursuant  
8 to the procedures set forth in subdivision (g).

9 (g) To renew an existing order allowing involuntary medication,  
10 the county department of mental health, or other designated county  
11 department, shall file with the superior court, and shall serve on  
12 the inmate and his or her counsel, a written notice indicating the  
13 department's intent to renew the existing involuntary medication  
14 order.

15 (1) The request to renew the order shall be filed and served no  
16 later than 21 days prior to the expiration of the current order  
17 authorizing involuntary medication.

18 (2) The inmate shall be entitled to, and shall be given, the same  
19 due process protections as specified in subdivision (c).

20 (3) Renewal orders shall be valid for one year from the date of  
21 the hearing.

22 (4) An order renewing an existing order shall be granted based  
23 on clear and convincing evidence that the inmate has a serious  
24 mental disorder that requires treatment with psychiatric medication,  
25 and that, but for the medication, the inmate would revert to the  
26 behavior that was the basis for the prior order authorizing  
27 involuntary medication, coupled with evidence that the inmate  
28 lacks insight regarding his or her need for the medication, such  
29 that it is unlikely that the inmate would be able to manage his or  
30 her own medication and treatment regimen. No new acts need be  
31 alleged or proven *in order to renew an existing order*.

32 (5) If the county department of mental health, or other  
33 designated county department, wishes to add a basis to an existing  
34 order, it shall give the inmate and the inmate's counsel notice in  
35 advance of the hearing via a renewal notice or supplemental  
36 petition. Within the renewal notice or supplemental petition, as  
37 described in subdivision (g), the county department of mental  
38 health, or other designated county department, shall specify what  
39 additional basis is being alleged and what qualifying conduct within  
40 the past year supports that additional basis. The county department

1 of mental health, or other designated county department, shall  
2 prove the additional basis and conduct by clear and convincing  
3 evidence at a hearing as specified in subdivision (c).

4 (6) The hearing on any petition to renew an order for involuntary  
5 medication shall be conducted prior to the expiration of the current  
6 order.

7 (h) In the event of a conflict between the provisions of this  
8 section and the Administrative Procedure Act (Chapter 4.5  
9 (commencing with Section 11400) of Part 1 of Division 3 of the  
10 Government Code), this section shall control.